

WARREN D. ELMORE

IBLA 79-310

Decided August 13, 1979

Appeal from decision of the California State Office, Bureau of Land Management, rejecting as untimely filed a copy of the notice of location for the June Acme placer mining claim.

Reversed and remanded.

1. Rules of Practice: Appeals: Effect of

When an appeal is filed with the Board of Land Appeals from a decision made by an official of the Bureau of Land Management, that official loses jurisdiction of the case and has no further authority to take any action concerning it until his jurisdiction over the matter is restored by action dispositive of the appeal.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment

Where a person purchases a mining claim originally located on or before Oct. 21, 1976, the requirements of 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the purchaser has until Oct. 21, 1979, to submit a copy of the official record of the notice of certificate of the claim filed under state law. In these circumstances, the 90-day filing deadline set out in 43 CFR 3833.1-2(b) for claims located after the enactment of FLPMA does not apply.

APPEARANCES: Warren D. Elmore, pro se.

## OPINION BY ADMINISTRATIVE JUDGE STUEBING

On March 20, 1979, Warren D. Elmore filed a copy of a location notice for the June Acme placer mining claim with the California State Office, Bureau of Land Management (BLM). This location notice indicated that the claim had been located on December 3, 1978.

On March 21, 1979, BLM issued a decision rejecting this copy of the location notice and returning it to Elmore as untimely filed. BLM held that it had not been filed within 90 days after the date of location of the claim, as required by section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b). Elmore (appellant) filed a timely notice of appeal of this decision, and the matter was forwarded to this Board for action.

On April 17, 1979, while the appeal was pending before this Board, BLM issued a decision purporting to vacate its earlier decision of March 21. BLM noted in this decision that appellant had submitted a copy of a notice of location indicating that the claim had been located on May 10, 1972, rather than in December 1978 as stated on the location notice first submitted. Apparently, Elmore had shown that he and three others purchased the claim on December 3, 1978, and, on February 23, 1979, filed with the Plumas County, California, Recorder an amended notice of location describing the purchasers as the new locators.

[1] BLM's second decision, which purports to vacate its decision of March 21, 1979, is ineffective. When an appeal is filed with this Board from a decision made by a BLM official, that official loses jurisdiction over the case and has no further authority to take any action concerning it until his jurisdiction over the matter is restored by action dispositive of the appeal. Duncan Miller, 38 IBLA 154, 158 (1978); Utah Power and Light Co., 14 IBLA 372, 373 (1974). BLM properly could have elected to forward to this Board the additional information provided by appellant along with a recommendation that this information was dispositive of the matter, or to request remand of the case for further action. However, as long as the matter was pending before this board, BLM was without authority to take any action dispositive the matter.

[2] Nonetheless, we concur with BLM that appellant has now complied with the pertinent filing requirements. Where a party purchases a mining claim originally located on or before October 21, 1976, the requirements of 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the party has until October 21, 1979, to submit a copy of the official record of the notice or certificate of the claim filed under state law. In these circumstances, the 90-day filing deadline in 43 CFR 3833.1-2(b) for claims located after the enactment of FLPMA does not apply.

Although BLM has not submitted it to this Board for review, appellant apparently filed a copy of the original notice of location showing that the June Acme placer mining claim was located on May 10, 1972, prior to the enactment of FLPMA, rather than on December 3, 1978, as stated on the amended location notice. Appellant and three others apparently purchased the claim on December 3, 1978, and filed an amended notice of location with the county Recorder, describing themselves as the new owners.

By filing copies of this original notice of location and the amended notice of location, appellant has met the requirement set out in 43 CFR 3833.1-2(a) within the time limit specified therein.

We note that the amended location notice, which is the subject of the March 21 decision, describes the claim as "the North 1/2" sec. 12, T. 24 N., R. 5 E., Mount Diablo meridian, comprising "80 acres." This description encompasses 320 acres. The accompanying plat shows the claim probably occupies the W 1/2 NW 1/4 sec. 12, although the plat, as drawn, indicates some irregularity in the surveyed sections which we have no means of verifying. This will require resolution.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, both the decision of March 21, 1979, and the decision of April 17, 1979, are vacated, and the matter is remanded for further action consistent herewith.

Edward W. Stuebing  
Administrative Judge

We concur.

Newton Frishberg  
Chief Administrative Judge

Frederick Fishman  
Administrative Judge

